know the senior Senator from Iowa has been busy listening to what the Republican leader's line is on the Supreme Court vacancy, but this disgusting rightwing attack from Republicans to a fellow Iowan—a judge he enthusiastically supported—demands a response.

Senator GRASSLEY needs to tell the people of Iowa whether he supports the smear campaign that his own Republicans are hurling at Judge Jane Kelly. Does he support the smear campaign? That is a question that needs to be answered, especially since the Judicial Crisis Network—this rightwing, secretly funded by dark money—has been in lockstep with Senator GRASSLEY's obstruction and even praising him while at the same time smearing Judge Kelly.

If he doesn't go on record, he needs to do something. I can't imagine why he wouldn't go on record denouncing this type of disgusting rhetoric. I look forward to the senior Senator from Iowa setting the record straight on his fellow Iowan and a judge whom he personally endorsed.

Madam President, there is no one on the floor. Will the Chair announce the business of the day.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business until 4 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. BALDWIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FILLING THE SUPREME COURT VACANCY

Ms. BALDWIN. Madam President, I rise today to speak about something that guides the work of each and every one of us—the U.S. Constitution. Each and every one of us has taken an oath of office to support and defend the Constitution of the United States. We all solemnly swear that we will bear true faith and allegiance to the Constitution and that we will faithfully discharge the duties of our office. Have some of the Senate Republicans forgotten this?

Last week a colleague was asked in a radio interview on a Wisconsin radio station if Republicans would be more likely to advance a Supreme Court nomination had a Republican been elected President in 2012. He said: ''Generally, and this is the way it works out politically, if you're replacing—if a conservative president's replacing a conservative justice, there's a little more accommodation to it.'' Do Senate Republicans really believe that they need a Republican President simply to do their jobs?

I would like to remind my colleagues that President Obama was elected to a 4-year term in 2012 with over 65 million votes. The American people decided who our President is, and according to the Constitution, the term the President earned has more than 300 days remaining. The voices of those 65 million Americans need to be heard and respected despite how much some people want to silence them, disrespect them, and ignore them.

On Supreme Court vacancies, the Constitution is also clear. Under article II of the Constitution, the President shall appoint judges to the Supreme Court and the Senate's role is to provide advice and consent. It is the constitutional duty of the President to select a Supreme Court nominee, and the Senate has the responsibility to give that nominee fair consideration with a timely hearing and a timely vote.

It is deeply troubling to me and the people for whom I work in Wisconsin that the Republican majority would choose not to fulfill their constitutional duty. Before the President has even made a nomination to fill the current vacancy, a number of Senators have announced that they will not perform their constitutional duty. This not only runs contrary to the process that the Framers envisioned in article II, but it runs counter to our Nation's history.

Now, some of my colleagues have claimed that the Senate history supports their historic obstruction. This is simply false. In fact, six Justices have been confirmed in Presidential election years since 1900, including Louis Brandeis, Benjamin Cardozo, and Republican appointee Anthony Kennedy, who was confirmed by a Democratic-controlled Senate during President Ronald Reagan's last year in office.

Recently, one of my colleagues on the other side suggested that the nomination and confirmation process for a Supreme Court Justice—perhaps just this impending Supreme Court nomination—would be nothing more than playing pinata. I would like to point out that when playing pinata, children are typically blindfolded, spun around in circles, and then they take a whack at the pinata with either a bat or stick. It is as if my Republican colleagues have become dizzied by what they are hearing around them—perhaps Donald Trump's divisive rhetoric.

Do they see a Supreme Court nominee as nothing more than something to whack over and over, like a pinata? The violence of the metaphor is problematic. Have they lost faith and allegiance in their constitutional duties?

Today, the American people deserve a full and functioning Supreme Court, not an empty seat on the highest Court in the land. The American people cannot afford partisan obstruction that threatens the integrity of our democracy and the functioning of our constitutional government.

In my home State of Wisconsin, people get it. A recent poll there done by Marquette University showed a majority of the people believe that the Senate should hold hearings and a vote on a nominee this year. A majority of Wisconsinites also said they believe that leaving this seat on our highest Court vacant for more than a year will hurt the U.S. Supreme Court's ability to do its job. They are right, and their message to Washington and the Republican majority is simple: Do your job so the Supreme Court can do its job on behalf of all of the American people. The American people deserve better than a long-term vacancy that could jeopardize the administration of justice across our whole country.

So I call on my colleagues to join together on behalf of the American people to fulfill our constitutional obligation of restoring the U.S. Supreme Court to its full strength.

In the spirit of cooperation, in the spirit of bipartisanship, I call on Senate Republicans to end their partisan obstruction and do their jobs.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

TRAGEDY IN KANSAS AND IMMIGRATION REFORM

Mr. MORAN. Madam President, I wish to address the Senate in regard to a terrible tragedy that has occurred in our State. I start with the premise that our immigration system is terribly broken and the consequences of flawed immigration policies exhibit themselves across our society. It is hard to understand why nothing has been done to address certain obviously dangerous vulnerabilities and specific problems that put American lives at risk.

Sanctuary city policies and indifference about prosecution of illegal immigrants arrested for dangerous crimes and the tolerance of bureaucratic redtape by the administration all contribute to a dangerous degrading of the criminal justice system. The failure to address illegal immigration at all levels of government has been accounted for in lost lives.

Sometimes a government failure is just annoying. Sometimes it is deadly. Decades of broken immigration policy contributed to the situation that led to the murder of four people in Kansas and another in Missouri. The victims are Michael Capps, 41 years old, Jake Waters, 36 years old, Clint Harter, 27 years old, and Austin Harter, 29 years old, all of Kansas City, KS, and Randy Nordman, 49 years old, of New Florence, MO. The man suspected of taking these lives is an illegal immigrant—a

man who has unlawfully entered the United States three times. He has been arrested over and over. He has repeatedly demonstrated that he is a serious threat. Yet, despite these red flags, the system failed, and this man was free and able to commit these barbaric acts.

The extent of the systemic breakdown in this case is sickening. How criminal suspects unlawfully in the country are processed is a failure. The policies are terribly ineffective. In the current system, justice is delayed by bureaucracy or obstructed, in some cases, amazingly, by design. A broken system—some people prefer it that way and work to make it so. Others simply permit it to persist. Regardless, this has resulted in horrific crimes.

Sanctuary city policies and the laws that enable them must be fixed before the unnecessary loss of innocent life happens again. Failure to do so only allows more crimes like these murders and the spree of criminal behavior that preceded them.

Congress needs to act now. The President needs to act now. The Department of Homeland Security needs to act now. Local governments and law enforcement agencies need to act now.

The Senate's attempt to do just that has been stymied, but we must not give up on an effort to secure our Nation and protect Americans from harm. Failure to address these problems will only make the problems worse and will make them more difficult to solve later. Continuing the status quo means empowering career offenders, incentivizing law-evading behavior, impeding the prosecution of crime, and releasing dangerous and habitually unlawful individuals who have no place in our communities.

The victims of crime like last week's horrors in Kansas City have been failed by their communities and by their political leaders. Americans and our communities will continue to pay the price for the failure of our immigration system and the refusal of policymakers to work together to fix it.

Americans and their families will continue to pay—hopefully not again in the loss of life, but how can we guarantee that? We must act quickly. We must act now to correct these immediate problems, improve our Nation's broken immigration policies and laws, and stop the terrible consequences.

The loss of life is a terrible thing, and probably in this circumstance had no reason to happen, would not have happened if jobs had been done.

Kansans, Kansas families, Americans, American families deserve much, much better. These victims and their families—we honor them today, we offer our condolences and provide our sympathies—but these individuals and their families deserved better.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

NOMINATION OF JOHN KING

Mr. LANKFORD. Madam President, I rise to speak on the nomination of John King to be Secretary of Education.

Dr. King has impressive credentials and an inspiring personal story. I have had the opportunity to meet with him and discuss his leadership and his view of the law.

I shared with Dr. King that in the view of many legal experts and school officials across the country, the Department of Education has been bullying schools to comply with policies that simply do not have the force of law. This coercive use of power, however well intentioned, is wrong and it is unlawful.

Leadership requires making sure that those serving within the Department conduct themselves in full compliance with the law.

I have an obligation to the people of Oklahoma to ensure that the President's nominees adhere to the law. Regrettably, Dr. King has refused to commit to stopping these regulatory abuses if he were confirmed. For that reason, I will oppose his nomination today.

For far too long we have witnessed executive overreach in this administration. From the Clean Power Plan to waters of the United States, Federal departments and agencies have usurped the power to invent law with increasing boldness. The Department of Education overreach is similar in this kind.

Instead of promulgating rules that conflict with congressional intent, the Department of Education is skirting the rulemaking process altogether by issuing guidance documents they call Dear Colleague letters. Guidance documents cannot and do not have the force of law. Guidance documents may only interpret existing obligations found in statute or regulation.

Some agencies complain that the rulemaking process is too long and it requires too much public input, so it is easier just to say that the new rule simply interprets an existing rule, and then skip the compliance with the Administrative Procedures Act that is required for a new rule. It is complete irony that agencies see regulatory compliance as too burdensome, so they impose new regulatory guidance on States, local governments, tribes, and private institutions at a faster pace, and those institutions have no way to fight the rules—only comply.

Let me give an example from the Department of Education's Office of Civil Rights. They have a great responsibility to promote our shared American values of equal opportunity, ensuring gender equality, and to work with federally funded schools to prohibit sexual harassment and sexual violence. As the father of two daughters, I fully support the objectives of Title IX and condemn all forms of sexual discrimination.

But the Office of Civil Rights enforcement authority comes from Title IX of the Education Amendments of 1972 bill, and those Office of Civil Rights Dear Colleague letters that are now being put out there supposedly notify schools of their obligations under Title IX.

Two of the Office of Civil Rights Dear Colleagues letters significantly expand school liability by prescribing policies required neither by Title IX nor by OCR's regulations. I am particularly concerned with OCR's 2010 Dear Colleague letter on harassment and bullying and a 2011 letter on sexual violence.

These letters respectively prohibit conduct and require procedures not required by law. For example, the 2010 letter says that making sexual jokes or distributing sexually explicit pictures or creating emails or Web sites of a sexual nature can be actionable under Title IX. Well, regardless of what one personally thinks about abhorrent things like what I have just described, the First Amendment protects all forms of speech, and no part of our Federal Government can dictate what is said and not allowed to be said on a university campus. The 2010 letter leaves schools to wonder whether they should police certain speech on their campus or fear a Title IX investigation.

The 2011 letter requires schools to change their Title IX disciplinary procedures to require what is called a preponderance-of-the-evidence standard of proof. This means that the decisionmaker is 51 percent sure a student committed an act of sexual assault or sexual violence. But the Office of Civil Rights doesn't require many due process protections for the accused that he or she would enjoy being provided in a court of law.

The Office of Civil Rights said it was merely interpreting the ''equitable resolution'' standard that is in the law. So it changed, creating a new standard and saying it is just interpreting some equitable standard that is in the law—a standard that no other administration has ever applied.

If these policies had been subjected to notice-and-comment rulemaking, I wouldn't be standing here today. When agencies follow the law, notice and comment allows for public input and leads to better regulatory outcomes.

But universities never got that chance. So on January 7, 2016, I asked the Department of Education a simple question: From where in the text do you derive this new authority? Where is it in the law that you created this new policy? Because the Department of Education can't create a new law; they can simply promulgate rules from existing law. That is a pretty basic question: Where did it come from in the law?

Unfortunately, the Department of Education did not answer my question. They sent me a letter back, but in their response they insisted that they have the authority to issue guidance under Title IX and cited general abilities in the statute. They also cited prior guidance documents, which are also not legal documents. You can't